

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 393 of 1984

with

CRIMINAL APPEAL No 429 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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SANDHI JUMMA HUSSAIN & ORS

Versus

STATE OF GUJARAT  
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Appearance:

Shri P.M. Thakkar, Advocate, for the  
Appellants-accused (in Criminal Appeal No. 393 of  
1984) and for the Respondents (in Criminal Appeal  
No. 429 of 1984)

Shri S.T. Mehta, Additional Public Prosecutor,  
for the Respondent-State (in Criminal Appeal No.  
393 of 1984) and for the Appellant-State (in  
Criminal Appeal No. 429 of 1984)  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/10/96

#### ORAL JUDGEMENT

Both the appeals are directed against the judgment and order of conviction passed by the learned Additional Sessions Judge at Jamnagar on 27th February 1984 in Sessions Case No. 82 of 1981. Thereby the learned trial Judge convicted the appellants of Criminal Appeal No. 393 of 1984 (the accused for convenience) of the offences punishable under sections 147, 148 and 325 read with sec. 149 of the Indian Penal Code, 1860 (the IPC for brief) and were sentenced to rigorous imprisonment for 3 months for each of the offences punishable under sec. 147 and 148 thereof and rigorous imprisonment for 6 months for the offence punishable under sec. 325 read with sec. 149 thereof. The aforesaid judgment and order of conviction obviously aggrieved the appellants in Criminal Appeal No. 393 of 1984. They have therefore by means of this appeal invoked the appellate jurisdiction of this Court under sec. 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief) for questioning its correctness. The prosecution appears to have been aggrieved by the inadequacy of the sentence imposed on the accused. It has also therefore approached this Court by means of Criminal Appeal No. 429 of 1984 under sec. 377 of the Cr.P.C. for enhancement of the sentence. Since both the appeals arise from the same judgment and order of conviction and sentence, I have thought it fit to dispose of both these appeals by this common judgment of mine.

2. It is not necessary to set out in detail the facts giving rise to both these appeals. Some scuffle took place between the accused and certain other group of persons some time on 14th April 1981 at about 6 p.m. in village Badla in Jamnagar district. That gave rise to cross complaints. So far as the complaint against the present appellants is concerned, it ultimately came to be registered as Sessions Case No. 82 of 1981 in the Sessions Court at Jamnagar. It appears to have been assigned to the learned Additional Sessions Judge for trial and disposal. The charge against the accused was framed on 4th February 1984 at Ex. 4 on the record of the trial. No accused pleaded guilty to the charge. Thereupon they were tried. After recording the prosecution evidence and after recording the further statement of each accused and after hearing arguments, by his judgment and order passed on 27th February 1984 in Sessions Case No. 82 of 1981, the learned Additional Sessions Judge at Jamnagar convicted the accused of the offences punishable under sec. 147, 148 and 325 read

with sec. 149 of the IPC and sentenced each of them to rigorous imprisonment for 3 months for each of the offences punishable under sections 147 and 148 thereof and rigorous imprisonment for 6 months for the offence punishable under sec. 325 read with sec. 149 thereof. The sentences were ordered to run concurrently. The aggrieved accused have thereupon invoked the appellate jurisdiction of this Court under sec. 374 of the Cr.P.C. by means of Criminal Appeal No. 393 of 1984 and the prosecution agency has done so under sec. 377 thereof by means of Criminal Appeal No. 429 of 1984.

3. Both learned Advocate Shri Thakkar for the accused and learned Additonal Public Prosecutor Shri Mehta for the prosecution agency have taken me through the entire evidence on record in support of their respective submissions qua their respective appeals. Learned Advocate Shri Thakkar for the accused has submitted that the learned trial Judge was in error in recording the finding of guilt against the accused. According to learned Advocate Shri Thakkar for the accused, the accused were entitled to benefit of doubt in this case in view of the material on record. As against this, learned Additional Public Prosecutor Shri Mehta for the prosecution agency has submitted that the learned trial judge has carefully scanned and scrutinized the evidence on record for the purpose of fastening guilt to the accused, and as such the impugned judgment and order of conviction calls for no interference by this Court in this appeal. Learned Additional Public Prosecutor Shri Mehta for the prosecution agency has further submitted that the offence punishable under sec.325 read with sec. 149 of the IPC is a serious one and it is punishable with imprisonment which may extend upto 7 years but the learned trial Judge appears to have dealt with the accused very leniently qua imposition of sentence. In that view of the matter, runs the submission of learned Additional Public Prosecutor Shri Mehta for the prosecution agency, the sentence deserves to be enhanced.

4. It transpires from the material on record that the prosecution examined quite a few eye witnesses in support of its case at trial. They have given a truthful account of the incident. They have stood their ground well in their searching cross-examination on behalf of the accused. With respect, the learned trial Judge has taken pains in scanning and scrutinizing the evidence on record and has recorded the finding of guilt against the accused. The conclusion reached by the trial court that the guilt is brought home to the accused beyond reasonable doubt is found to be quite just and proper and

fully supported by the evidence on record. As rightly submitted by learned Additional Public Prosecutor Shri Mehta for the prosecution agency, the judgment and order of conviction calls for no interference by this Court in the appeal at the instance of the accused.

5. It is true that under sec. 377 of the Cr.P.C., it would be open to the accused to raise a plea of acquittal. However, in view of my aforesaid discussion, the plea of acquittal will have just to be rejected.

6. Learned Advocate Shri Thakkar for the accused has then submitted that the learned trial Judge was not justified in not granting benefit of probation under sec. 360 of the Cr.P.C. and no reasons are recorded for non-grant of probation as required by sec. 361 thereof. As against this, learned Additional Public Prosecutor Shri Mehta for the prosecution agency has submitted that the offence punishable under sec. 325 read with sec. 149 of the IPC is quite serious and the learned trial Judge has rightly not considered the case for grant of probation.

7. It may be noted that the accused were heard on the question of sentence after the order of conviction was passed against them. In that context it was submitted on their behalf that they were poor agriculturists with large families to support. They prayed for mercy and sympathy. The learned trial Judge has taken into consideration that fact. The learned trial Judge has observed that they deserve to be dealt with sympathetically in the matter of sentence. The learned trial Judge did observe that they were poor agriculturists and it was their first ever offence. The learned trial Judge has also observed that, if a heavy punishment of imprisonment is imposed on them, their families would suffer. It thus becomes clear that the learned trial Judge himself found that the case deserved to be dealt with leniently qua imposition of sentence.

8. In this connection a reference deserves to be made to the relevant provisions contained in sec. 360 of the Cr.P.C. Sub-section(1) thereof empowers the court in such circumstances to release the accused on his entering into a bond, with or without surety, to appear and receive sentence when called upon during such period (not exceeding 3 years as the court may direct and in the meantime to keep the peace and be of good behaviour. At this stage a reference also deserves to be made to sec. 361 thereof. It enjoins a duty upon the court to record in its judgment the specific reasons for not dealing with

an accused person inter alia under sec. 360 thereof. It transpires from the observations of the learned trial Judge on the question of sentence that the learned trial Judge has not focussed his attention on the relevant provisions contained in sec. 360(1) of the Cr.P.C. Incidentally what is observed by the learned trial Judge qua the sentence would require him to consider the case of the accused for grant of probation under sec. 360(1) thereof. No special reasons are assigned in the judgment for non-consideration thereof as required by sec. 361 thereof. In that view of the matter, the order of sentence passed by the learned trial Judge cannot be sustained in law.

9. Sec. 360(4) of the Cr.P.C. empowers the appellate court to pass an order under the aforesaid statutory provisions. This Court in appeal or even in revision can look into the matter for the purpose of consideration of the case under sec. 360(1) thereof.

10. It may be noted that the incident giving rise to the criminal proceeding occurred as back as on 14th April 1981. More than 15 years have rolled by since then. The accused have all throughout remained on bail. The passage of time might have healed the wounds on the side of the complainant and his group as well. As aforesaid, the learned trial Judge has found the case of the accused to be considered quite sympathetically qua the sentence. This appeal has remained pending in this Court for more than 12 years. To ask the accused to suffer imprisonment would upset settled expectations qua their respective families when they have remained on bail all throughout. In this view of the matter, I think the accused deserve to be granted the benefit under sec. 360(1) of the Cr.P.C.

11. In this connection a reference deserves to be made to the binding ruling of the Supreme Court in the case of A.P. Raju v. State of Orissa reported in 1995 S.C.C.(Cri.) 675. In that case the accused was found guilty of the offence punishable under sec. 304A of the IPC on account of rash and negligent driving resulting in the death of a boy. It was found in that case that the incident had occurred about 15 years before and the accused had remained on bail for more than 8 years. On the facts and in the circumstances of the case, the accused was ordered to be released under sec. 360 of the Cr.P.C. on probation of good conduct, be of good behaviour and keep the peace for a period of one year. The same reasoning would be applicable in the present case as indicated hereinabove. In the present case, the

accused have remained on bail all throughout for last more than 15 years. The maximum punishment that can be awarded for the offence punishable under sec. 325 read with sec. 149 of the IPC is imprisonment for 7 years. That would be covered by sec. 360(1) of the Cr.P.C. I am therefore of the opinion that the accused deserve to be released on probation thereunder on suitable terms. Since I am taking this view of the matter, I am unable to accept the submission urged before me by learned Additonal Public Prosecutor Shri Mehta for the prosecution agency for enhancement of the sentence.

12. In the result, Criminal Appeal No. 429 of 1984 fails. It is hereby dismissed. Criminal Appeal No. 393 of 1984 is partly accepted. The judgment and order of conviction passed by the learned Additional Sessions at Jamnagar on 27th February 1984 in Sessions Case No. 82 of 1981 is maintained. The order of sentence is however modified and instead of sentencing the accused to any kind of imprisonment, they are ordered to be released on each one's entering into a bond of Rs. 5000 each with sureties to the satisfaction of the trial court, to appear and resume the sentence when called upon during the period of 2 years from today and in the meantime they are directed to keep the peace and be of good behaviour. The bail bonds are cancelled.

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